

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRED GENTNER and ROBERT STEVENSON,	:	
	:	CIVIL ACTION
Plaintiffs,	:	
v.	:	NO. 94-7443
	:	
CHEYNEY UNIVERSITY OF PENNSYLVANIA,	:	
et al.,	:	
	:	
Defendants.	:	

MEMORANDUM

R.F. KELLY, J.

AUGUST 25, 1997

The parties in the above-captioned matter have filed cross-motions for summary judgment. This case was tried to a jury in April of 1996. The jury found in favor of Plaintiffs on their claims under 42 U.S.C. § 1983, but issued inconsistent answers to special verdict interrogatories regarding Plaintiffs' claims of discriminatory retaliation under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-3 ("Title VII"). Then, in response to Defendants' post-trial motions for judgment notwithstanding the verdict or, alternatively, for a new trial, this Court issued a Memorandum and Order, dated September 17, 1996, denying Defendants' motions with respect to Plaintiffs' § 1983 claims, but granting a new trial with respect to Plaintiffs' Title VII claims. On appeal, the Third Circuit denied Plaintiffs' petition because there was no final judgment rendered on Plaintiffs' Title VII claims.

Plaintiffs now contend that this case is in a position to be disposed of via a summary judgment motion based on the doctrine

of collateral estoppel. Specifically, Plaintiffs' argue that collateral estoppel precludes Defendants from raising certain factual issues and that these precluded issues coupled with the undisputed record from the previous trial and the § 1983 verdict allow this Court, as a matter of law, to rule in favor of Plaintiff. Defendants respond that collateral estoppel cannot apply to the case at hand because, even if related, a Title VII retaliation claim and a § 1983 claim are not the same. In addition, Defendants assert that because Plaintiffs were given valuable benefits, such evidence indicates that Plaintiffs suffered no adverse employment action as claimed and, thus, summary judgment should be granted in Defendants' favor because as a matter of law Plaintiffs were not constructively discharged. For the following reasons, Plaintiffs' Motion will be granted in part and denied in part, and Defendants' Cross-Motion will be denied.

BACKGROUND

In bringing their successful § 1983 claim, Plaintiffs demonstrated that (1) acts were performed by the **individual defendants**, Drs. Jones and Chang, acting under color of state law and (2) the conduct of Drs. Jones and Chang deprived Plaintiffs of a right, privilege or immunity secured by the Constitution or federal law. See Rodgers v. Parole Agent Sci-Frackville, Wech, 916 F. Supp. 474, 476 (E.D. Pa. 1996). Specifically, the jury found that Plaintiffs proved, by a preponderance of the evidence, that Plaintiffs' exercise of free speech in opposing the hiring practices of Cheyney University was a substantial or motivating

factor in the individual defendants taking adverse action (retaliating) against Plaintiffs for their speech.

To prove their Title VII discriminatory retaliation case, Plaintiffs had to show the following: (1) Plaintiffs engaged in conduct protected by Title VII; (2) Cheyney took adverse action against Plaintiffs; and, (3) a causal link exists between Plaintiffs' protected conduct and Cheyney's adverse action. Charlton v. Paramus Bd. of Educ., 25 F.3d 194, 201 (3d Cir. 1994), cert. denied, ___ U.S. ___, 115 S. Ct. 590 (1994). As set forth below, because the jury gave inconsistent answers to special verdict interrogatories, "the necessary ingredients for sustaining a claim of discriminatory retaliation under Title VII [we]re not present." Gentner, et al. v. Cheyney University, et al., No. CIV. A. 94-7443, 1996 WL 525323, *4 (E.D. Pa. Sept. 16, 1996).

With respect to the first prong, this Court ruled as a matter of law that the speech at issue, Plaintiffs' complaints about Cheyney's hiring practices, is a protected activity. (N.T. 4/17/96 at 149). In addition, the jury found that "Plaintiffs were constructively discharged due to intolerable working conditions (hostile work environment) created by [Cheyney] that would so detrimentally affect a reasonable person." See Jury Interrogatory 6. Thus, the jury concluded that Plaintiffs were discharged subsequent to their exercise of free speech in complaining about Cheyney's hiring practices, which satisfies the second requirement of Plaintiffs' Title VII claim. However, the jury's response to question 5, that Cheyney did not retaliate against Plaintiffs for

opposing Cheyney's hiring practices, is inconsistent with a finding that a causal link existed between Plaintiffs' protected conduct and Cheyney's adverse action.¹ The jury followed these inconsistent answers with an award of damages to Plaintiffs under Title VII, notwithstanding the verdict form's contrary instructions.

DISCUSSION

The doctrine of collateral estoppel precludes a party from litigating an issue that has already been adjudicated in a prior proceeding. In order for collateral estoppel to apply, four elements must be met: (1) the issue decided in the prior adjudication must be identical to the one presented in the later action; (2) there must have been a final judgment on the merits; (3) the party against whom collateral estoppel is being asserted must have been a party, or in privity with the party, to the prior adjudication; and (4) the party against whom collateral estoppel is being asserted must have had a full and fair opportunity to litigate the issue in question in the prior action. See Schroeder v. Acceleration Life Ins. Co., 972 F.2d 41, 45 (3d Cir. 1992); see also Bradley v. Pittsburgh Bd. of Educ., 913 F.2d 1064, 1073 (3d

¹ The jury's answer to question 5 was inconsistent with a finding of liability against Cheyney, despite the jury finding for Plaintiffs in response to question 1 regarding Plaintiffs' § 1983 claim -- that the individual defendants, Drs. Jones and Chang, retaliated against Plaintiffs for opposing Cheyney's hiring practices. Because questions 5 and 6, in essence, require similar findings of respondeat superior liability, this Court had no reasonable way to read the jury's answers to questions 5 and 6 as expressing a coherent view of the case.

Cir. 1990).

In this case, Defendants are correct in that claims under § 1983 and Title VII are not identical. While said claims are based on the same set of facts, different elements must be established by the Plaintiffs in order to prove them. However, "[c]ollateral estoppel, or issue preclusion, is a doctrine which prevents re-litigation of an issue in a later action, despite the fact that it is based on a cause of action different from the one previously litigated." Balent v. City of Wilkes-Barre, 669 A.2d 309, 313 (Pa. 1995) (citations omitted). Thus, as long as the issue that Plaintiffs seek to bar Defendants from relitigating in this action was litigated in the last trial, the first prerequisite of collateral estoppel is met.

The remaining elements that must be present for collateral estoppel to apply with respect to the jury's § 1983 verdict are also present. In the prior trial of this case there was a final judgment on the merits of Plaintiffs' § 1983 action. Furthermore, Cheyney University, the party against whom collateral estoppel is being asserted, was a party to the prior adjudication and had a full and fair opportunity to litigate the issue in question in the prior action. Thus, even though Cheyney was defending against a Title VII discrimination claim, there is no unfairness to the University in applying offensive collateral estoppel in this case. See Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 332-33 (1979) (holding that a party who received a "full and fair" opportunity to litigate their claims in an

equitable action was collaterally estopped from relitigating the same issues before a jury in a subsequent legal action brought against it by a new party).

Since Plaintiffs have proven that collateral estoppel applies to the second trial in this matter, the question as to which issues are precluded from relitigation still remains. In this regard, Plaintiffs argue that those issues specifically addressed by the jury interrogatories must be recognized as law in the retrial. (Plaintiffs' Memorandum at 27) (citing Gutzwiller v. Fenik, 860 F.2d 1317 (6th Cir. 1988)). Thus, Plaintiffs contend that collateral estoppel gives preclusive effect to the issues that were resolved with respect to Plaintiff's § 1983 claim against the individual defendants.²

Plaintiffs further contend that collateral estoppel precludes relitigation of all facts necessary to prove elements of the § 1983 claim and, thus, this Court should hold as a matter of law that Plaintiffs resigned as a result of the individual defendants' illegal retaliation. Plaintiffs point out that the jury was required to make a finding of fact that Plaintiffs were forced to resign as a result of retaliation. Specifically, this Court charged:

² Such findings include, as stated above, that Plaintiffs' exercise of their free speech in opposing the hiring practices of Cheyney University was a substantial and motivating factor in Drs. Jones and Chang taking adverse action (retaliating) against Plaintiffs for their speech and that these individual defendants intentionally acted with malicious motive or a reckless indifference toward Plaintiffs.

In order to recover under the 1983 claim, the plaintiffs must prove by a preponderance of the evidence that the defendant or defendants, Jones, Covington, Chang and Hoffman, acted separately and/or together, that in so doing they forced plaintiffs to resign, that the plaintiffs' act of opposing the hiring practices within the department is a substantial or motivating factor in the defendants' actions to force plaintiff to resign.

(N.T. 4/17/96 at 136-37) (emphasis added).

With respect to any remaining holes in Plaintiffs' case that were left as a result of the inconsistent jury verdict, Plaintiffs cite to the record in a painstaking review of the trial transcripts and attempt to show that Plaintiffs have proven all of the elements necessary to establish Cheyney's liability.

Despite the above, this Court cannot rely on collateral estoppel coupled with the record from the previous trial to grant Plaintiff's Motion for Summary Judgment on their Title VII claim.³ As noted above, the jury's inconsistent answers to questions 5 & 6, which require similar findings of respondeat superior liability, made it impossible for this Court to read said answers as expressing a coherent view of the case. Because the jury is now the finder of fact in Title VII cases, per the Civil Rights Act of 1991, and Defendant has no intention of waiving its right to a jury

³ Plaintiffs' claim alleges discriminatory retaliation in the form of constructive discharge. "In order to establish constructive discharge under Title VII, a plaintiff must show that the employer **knowingly** permitted conditions of discrimination so intolerable that a reasonable person subject to them would foreseeably resign." Waite v. Blair, Inc., 937 F. Supp. 460, 470 (W.D. Pa. 1995).

trial, this Court cannot grant summary judgment where there are genuine issues of fact as to whether Plaintiffs were constructively discharged.

During the previous trial, Plaintiffs did not clarify what Title VII theory their cause of action was operating under, and, in doing so, they have confused this Court and added to their own burden. "[N]either the special verdict interrogatories nor the jury instructions could make simple and straightforward what the parties were unable to clearly delineate." Gentner, 1996 WL 525323 at *5. The result was the incorporation of a constructive discharge theory into a Title VII discriminatory retaliation framework.

Now, in their post-trial submissions, Plaintiffs have defined their cause of action as a discriminatory discharge claim. The elements necessary to prove such a cause of action, while similar to discriminatory retaliation, would have better served Plaintiffs and this Court if clearly stated prior to the case being submitted to the jury. These elements include: (1) Plaintiffs engaged in a protected activity; (2) Plaintiffs were constructively discharged subsequent to or contemporaneously with such activity -- Cheyney knowingly permitted conditions of discrimination so intolerable that a reasonable person subject to them would foreseeably resign; and, (3) a causal link exists between Plaintiffs' protected activity and the discharge.

This Court already ruled as a matter of law that Plaintiff engaged in a protected activity. However, this Court

cannot in good conscience determine that the remaining elements of Plaintiffs' Title VII claim were present based on the previous jury verdict on Plaintiff's § 1983 claim and the trial record. The fact that plaintiffs' act of opposing the hiring practices within the department was a substantial or motivating factor in the retaliatory actions of individual defendants Jones and Chang to force Plaintiffs to resign does not answer whether Cheyney knowingly permitted conditions of discrimination so intolerable that a reasonable person subject to them would foreseeably resign.⁴ Furthermore, there can be no finding by this Court with respect to the third element, whether or not a causal link exists between Plaintiffs' protected activity and the constructive discharge, without first determining if a constructive discharge actually took place. Whether retaliatory measures taken by Drs. Jones and Chang were the likely reason for Plaintiffs' resignations is a factual question.⁵ See Kachmar v. Sungard Data Systems, Inc., 109 F.3d 173, 179 (3d Cir. 1997). As stated above, the Civil Rights Act of

⁴ While this Court pointed out, in the September 16, 1996 Memorandum Opinion, that there was a sufficient evidentiary basis for a reasonable jury to find that Jones and Chang retaliated against Plaintiffs for their exercise of free speech, it is not known what evidence the jury believed to be true and applicable in rendering a verdict in favor of Plaintiffs on their § 1983 claim.

⁵ In their response to Plaintiff's summary judgment motion, Defendants argue that Plaintiffs negotiated themselves a highly advantageous deal whereby each was able to take a full year of paid leave and then retire. Having accepted such a deal, Defendants argue that Plaintiffs cannot claim to have been constructively discharged. Whether such allegations are true will be for the jury to decide.

1991 allows such factual determinations to be resolved by a jury.

Although Plaintiffs were successful in litigating their § 1983 claim, what they have proved is relevant and should be given preclusive effect only with regard to the following: (1) Plaintiffs' exercise of free speech in opposing the hiring practices of Cheyney University was a substantial or motivating factor in the individual defendants (Jones and Chang) taking retaliatory action against Plaintiffs for their speech; and (2) Drs. Jones and Chang acted intentionally and with a malicious motive or a reckless indifference toward Plaintiffs. Even though Plaintiffs' § 1983 claim and their Title VII claim are distinctive with respect to the elements that must be proved, the issues were tied in together in the same context.

However, giving preclusive effect to anything more than the Plaintiffs' ability to prove the elements of a § 1983 claim against the individual defendants, Jones and Chang, would be pure guess work on the Court's part as to what facts the jury believed to be true in making its finding. As for Plaintiffs' argument that the jury, in rendering their § 1983 verdict, made a factual determination that Plaintiffs were constructively discharged as a result of the retaliatory actions of Jones and Chang, such a determination is not necessary in order to find § 1983 liability and a closer reading of this Court's jury instruction leads me to believe that such a jury determination with respect to the individual defendants' liability under § 1983 was not intended by this Court.

Based on the above, Plaintiffs' Motion for Summary Judgment will be granted only with respect to the application of collateral estoppel to the jury's § 1983 verdict. In addition, Defendants' Cross-Motion for Summary Judgment will be denied.

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et al.,	:	
	:	
Defendants.	:	
	:	

ORDER

AND NOW, this day of August, 1997, upon consideration of Plaintiffs' Motion for Summary Judgment and Defendants' Cross-Motion for Summary Judgment, and all responses thereto, it is hereby ORDERED that Plaintiffs' Motion for Summary Judgment is GRANTED with respect to the application of collateral estoppel to the jury's § 1983 verdict and DENIED in all other respects. It is further ORDERED that Defendants' Cross-Motion for Summary Judgment is DENIED.

BY THE COURT:

Robert F. Kelly, J.